STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SprintCom, Inc., Wireless Co., L. P., NPCR, Inc. d/b/a Nextel Partners and Nextel West Corp.'s Petition for Arbitration	)	
	)	Docket No. 12-0550
Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company.	)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S REPLY BRIEF ON EXCEPTIONS

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May 13, 2013

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I. Introduction

The Staff ("Staff") of the Illinois Commerce Commission ("Commission" or "ICC"), by and through its counsel, and pursuant to Section 200.400 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.400), respectfully submits this Reply Brief on Exceptions in the above-captioned matter. Staff, AT&T Illinois, and Sprint all filed their respective Initial Briefs ("IB") on March 22, 2013, their respective Reply Briefs ("RB") on April 2, 2013, and their respective position statements on April 8, 2013. *See* Staff IB; AT&T IB; Sprint IB; Staff RB; AT&T RB; Sprint RB; Staff Position Statement; AT&T Position Statement; Sprint Position Statement. The Administrative Law Judges ("ALJs") filed the Proposed Arbitration Decision ("PAD") on April 19, 2013. The parties filed Briefs on Exceptions ("BOE") on May 6, 2013.

Staff notes that Sprint's BOE focuses on personal attacks against the Commission ALJs rather than focusing on the issues. In the very first paragraph, Sprint makes this baseless charge:

> The most discouraging part of the ALJs' analysis *is their willingness to accept AT&T's company line*, *without critical analysis, on every key issue presented*, thereby recommending the adoption of contract language that will benefit the dominant ILEC and hurt competitors.

Sprint BOE at 1 (emphasis added).

Then, in the second paragraph, Sprint states, "The Commission should do *the work that the ALJs did not*." *Id*. (emphasis added). Staff disagrees with Sprint's assessment, and considers the accusations against the ALJs to be misplaced and ill-advised. Staff wishes to reiterate that it commends the ALJs on their professionalism throughout this docket and for drafting a PAD that reviews the issues presented in this proceeding in a clear and concise manner, is well written, and accurately reflects the positions taken by the parties.

Moreover, Sprint's real problem is not the ALJs. It is that its positions are not founded in the current state of the law. Many of Sprint's positions are grounded in conjecture from the FCC about how technological advancements may affect future regulation. Sprint ignores the transition that is at the heart of the FCC's CAF Order. Moreover, Sprint misrepresents the conclusions and analysis of a Second Circuit federal court decision upon which it largely bases its positions on a number of issues.

II. Reply to Request for Oral Argument

Staff sees no benefit in an oral argument. Contrary to Sprint's assertions, these issues have been thoroughly vetted. The numerous outstanding issues in this proceeding are highly complex and do not lend themselves to limited discussion. Sprint

has proposed to rewrite almost the entire order. An oral argument could not possibly cover all the potential issues that the Commission would have to consider. As a result, it would be administratively inefficient. Further, this arbitration docket has a limited and condensed statutory timeframe in which the Commission must act. As such, Staff recommends that the request for oral argument in this matter be denied.

III. Use of Interconnection Facilities

ISSUE 19

AT&T Illinois Description of Issue 19: Should the definition of "Interconnection Facilities" reference the FCC's definition of "Interconnection" in 47 C.F.R. § 51.5?

Sprint Description of Issue 19: What are the appropriate definitions of "Interconnection Facilities"?

Response to Sprint:

Staff took no exception to the PAD language on Issue 19, and continues to maintain its position and to support the PAD language on this issue. Staff BOE; Staff IB at 4-7; Staff RB at 1-6; PAD at 5-9. Staff does take exception, however, to Sprint assertions made in its BOE and responds herein.

Sprint asserts that the Second Circuit Court of Appeals decision in *S. New England Tel. Co. v. Comcast*, Docket No. 11-2332 (2d Cir., May 1, 2013) (*hereinafter*, "SNET") requires the Commission to remand and instruct the ALJs to implement the Second Circuit decision and rewrite the PAD. Sprint BOE at 2. Sprint states that the SNET decision directly impacts Issues 19, 20, 21-22, 24 and 43. Id. Regarding Issue 19 in particular, Sprint states that "there is no 'end user' limitation on AT&T's Section 251(c)(2) obligations. Sprint BOE at 26. Staff believes that the SNET decision is not controlling to the matters at issue here. That case involved a commercial agreement and not an interconnection agreement under section 252 of the Telecommunications

Act of 1996 (TCA), SNET at 9, and that agreement was subject to Connecticut law and policy, not that of Illinois. SNET at 7. If anything, the Second Circuit decision supports a case by case, state by state, assessment based on an individual state's concerns and local needs. The Second Circuit stated, "[t]he model under the TCA is to divide authority among the FCC and state commissions . . . with the intended effect of leaving state commissions free, where warranted, to reflect the policy choices made by their states." Id. It further explained that "the TCA 'gives the states commissions latitude to exercise their expertise in telecommunications and needs of the local market.'" SNET at 8. The Second Circuit emphasized that ". . . with regard to transit service Congress did not intend to preempt state regulation, the text of the TCA does not support preemption, and the FCC's indecision simply reflects its current preference for continued experimentation by state commissions." SNET at 9. To the extent that the Second Circuit considered the issue of transit service under Section 251(c)(2), it is well accepted that a decision from a sister circuit may be persuasive but is not controlling on other circuits. *See Coleman v. Dept of Justice*, 429 F. Supp 411 (D. Ind., ND 1977) at P 5. Therefore, the Commission is not required to change its policy or longstanding approaches to the matters at issue here.

ISSUE 20

> *AT&T Illinois Description of Issue 20(a): Should the ICA state that the Interconnection Facilities available to Sprint at TELRIC prices be limited to those facilities used "solely" for section 251(c)(2) interconnection?*
>
> *AT&T Illinois Description of Issue 20(b): Should the ICA provide that Interconnection Facilities purchased at TELRIC rates may not be used for 911 and Equal Access trunks?*
>
> *Sprint Description of Issue 20: What is the appropriate use of Interconnection Facilities provided by AT&T?*

Response to AT&T:

AT&T argues that the fact that Sprint is providing local exchange service is not sufficient to support the PO's finding that Sprint 9-1-1 traffic is Section 251(c)(2) traffic. AT&T BOE at 9. Staff agrees. As discussed, public safety answering points (PSAPs) are not end user customers of an ILEC and 9-1-1 calls from Sprint end user customers to AT&T-served PSAPs are not calls terminated to (or originated from) end user customers of an ILEC and thus not Section 251(c)(2) traffic. Staff BOE at 3-6. It is important to recognize that 9-1-1 calls from Sprint end user customers are routed and terminated to AT&T-served PSAPs because the PSAPs are subscribers of AT&T's 9-1-1 service, not because the PSAPs are subscribers of local exchange service of AT&T (the ILEC). In other words, the PSAPs receive 9-1-1 calls from Sprint end user customers as subscribers of AT&T's 9-1-1 service, which is a non local exchange service. Thus, Sprint 9-1-1 calls to AT&T-served PSAPs are not calls terminated to (or originated from) subscribers of local exchange services of AT&T (the ILEC) and thus not traffic terminated to end user customers of an ILEC. As a result, Sprint 9-1-1 traffic to AT&T-served PSAPs is not Section 251(c)(2) traffic and thus cannot be carried over Interconnection Facilities. Staff BOE at 3-6.

ISSUE 21

> *Sprint Description of Issue 21: What provisions, if any, regarding Interconnection Facility Audits should be included in the Agreement?*
>
> *AT&T Illinois Description of Issue 21: Should the ICA permit AT&T to obtain an independent audit of Sprint's use of Interconnection Facilities?*

Response to Sprint:

Staff took no exception to the PAD language on Issue 21, and continues to refrain from excepting to the ALJs' decision here. Staff BOE; Staff IB at 7-8; Staff RB at 6-7; PAD at 14.

ISSUE 22

Sprint Description of Issue 22: If Interconnection Facility Audits provisions are included in the Agreement, how should disputes regarding Interconnection Facility Audits be resolved?

AT&T Illinois Description of Issue 22: If audit provisions are included in the ICA and an audit demonstrates Sprint is not compliant, how should Sprint's non-compliance be addressed?

Response to Sprint:

Staff took no exception to the PAD language on Issue 22, and continues to refrain from excepting to the ALJs' decision here. Staff BOE; Staff IB at 9-12; Staff RB at 7-9; PAD at 14.

ISSUE 24

AT&T Illinois Description of Issue 24(b): Under what circumstances may Sprint use Combined Trunk Groups?

Sprint Description of Issue 24: Should Sprint be required to establish separate Type 2A Equal Access Trunk Groups?

Response to Sprint:

Staff took no exception to the PAD language on Issue 24, and continues to maintain its position and to support the PAD language on this issue. Staff BOE; Staff IB at 12-14; Staff RB at 9-10; PAD at 14-16.

ISSUE 29 (CARRYOVER)/30/30(a)/30(b)

Staff Description of Issue 29 Carryover: The Parties resolved the majority of Issue 29, but did not resolve whether AT&T Illinois' proposed language in 4.8.9 should be included in the agreement. The parties proposed to include this remaining part of Issue 29 with Issue 30.

Sprint Description of Issue 30: Should AT&T's language regarding routing of Exchange Access Service Traffic be included in the Agreement?

AT&T Illinois Description of Issue 30(a): Should InterMTA Traffic be routed and 1058 billed in accordance with Feature Group D?

AT&T Illinois Description of Issue 30(b): Should the ICA state that the parties will abide by the Ordering and Billing Forum's guidelines regarding JIP?

Response to Sprint:

Sprint objects to the ALJ's proposed resolution of Issues 30 and 30(a). Sprint BOE at 30. Sprint argues that "Sprint originated InterMTA Traffic that Sprint hands directly to AT&T is either 'telephone exchange service' or 'exchange access' – and both categories are within the scope of Section 251(c)(2)." *Id.* This statement reflects Sprint's attempt to argue that it is not acting in a manner comparable to an Interexchange Carrier, and thus should not subscribe to access charge services and pay switched access charges. The PAD was correct to determine that such traffic "ought to be carried over switched access facilities" and that the "CAF Order does not change the way InterMTA traffic is handled." PAD at 19.

In a literal sense, interexchange service is the transport of telecommunications services across exchanges. For example, the PUA defines Interexchange Telecommunications Service as "telecommunications service between points in two or more exchanges. See 220 ILCS 5/13-205. Viewed in this light, when Sprint hands InterMTA (and interexchange) traffic directly to AT&T, it is providing interexchange service, is subject to switched access charges, and should be sending traffic over switched access facilities. While Federal law is more complex, it does not alter this conclusion.

The FCC defines an interexchange carrier as "a telephone company that provides telephone toll service. An interexchange carrier does not include commercial mobile radio service providers as defined by federal law." 47 C.F.R. § 64.4000(d). As revealed by this rule, the FCC has differentiated CMRS providers from other providers of interexchange services. With respect to intercarrier compensation, the FCC has, with respect to CMRS providers, used the MTA to demarcate traffic that is subject to reciprocal compensation as opposed to switched access. Staff IB at 55. In the CAF Order, the FCC clearly and unequivocally preserved the use of the MTA to demarcate LEC-CMRS traffic that is subject to reciprocal compensation from LEC-CMRS traffic that is subject to switched access. *Id.* Thus, nothing in the CAF Order changed the fact that when Sprint hands InterMTA (and interexchange) traffic directly to AT&T, it is providing interexchange service, is subject to switched access charges, and should be sending traffic over switched access facilities.

Sprint criticizes the fact that the ALJs failed to "cite, discuss, or analyze the rules that took effect in 2011." Sprint BOE at 30. However, as noted by the ALJs, "the CAF Order does not change the way InterMTA traffic is handled." PAD at 19. Thus, Sprint's criticism is incorrect and should be given no weight.

IV. Point of Interconnection

ISSUE 16

> *AT&T Illinois Description of Issue 16: Must Sprint obtain AT&T's consent to Sprint's removal of a previously established POI?*
>
> *Sprint Description of Issue 16: Must Sprint obtain AT&T's consent to Sprint's designation of a POI at a technically feasible location on AT&T's network or Sprint's removal of a previously established POI?*

Response to Sprint:

Staff took no exception to the PAD language on Issue 16, and continues to maintain its position and to support the PAD language on this issue. Staff BOE; Staff IB at 21-23; Staff RB at 13-15; PAD at 36-37.

ISSUE 17

AT&T Illinois Description of Issue 17(a): Should Sprint be required to establish additional Points of Interconnection (POIs) when its traffic to an AT&T Tandem Serving Area exceeds 24 DS1s?

AT&T Illinois Description of Issue 17(b): Should Sprint be required to establish an additional Point of Interconnection (POI) at an AT&T end office not served by an AT&T tandem when its traffic to that end office exceeds 24 DS1s?

AT&T Illinois Description of Issue 17(c): Should Sprint establish these additional connections within 90 days?

Sprint Description of Issue 17: Should Sprint be required to establish additional Points of Interconnection (POIs) when its traffic to an AT&T Tandem Serving Area exceeds 24 DS1s?

Response to Sprint:

Staff took no exception to the PAD language on Issue 17, and continues to maintain its position and to support the PAD language on this issue. Staff BOE; Staff IB at 23-24; Staff RB at 15-16; PAD at 37-39.

V. Interconnection Facility Pricing and Sharing

ISSUE 44

AT&T Illinois Description of Issue 44: Should the ICA provide that Sprint is automatically entitled, as of the Effective Date of the ICA, to TELRIC based pricing on facilities ordered from AT&T's access tariff?

Sprint Description of Issue 44: Should Interconnection Facilities provided by AT&T be priced at cost based (i.e. TELRIC) rates?

Response to Sprint:

Staff took no exception to the PAD language on Issue 44, and continues to maintain its position and to support the PAD language on this issue. Staff BOE; Staff IB at 24; Staff RB at 9-10; PAD at 14-16.

ISSUE 45

AT&T Illinois Description of Issue 45(a): Should the Interconnection Facilities prices be applied on a "DS1/DS1 equivalents basis"?

AT&T Illinois Description of Issue 45(b): Should the ICA reference specific Commission orders for Interconnection Facilities pricing?

AT&T Illinois Description of Issue 45(c): Should Sprint be entitled to different rates for Interconnection Facilities than those set forth in the Price Sheet without amending the ICA?

Sprint Description of Issue 45: If the answer to V.D.(1) is yes, should Sprint's proposed language governing Interconnection Facilities/Arrangements and rates be included in the Agreement?

Response to Sprint:

Sprint asserts that its proposed language and procedure (i.e., DS1/DS1 equivalent pricing) does not result in "below-cost" provision of facilities by AT&T. Sprint BOE at 40. This contention, however, is directly contradicted by its illustration of how its DS1/DS1 equivalent pricing works. In the example on page 39 of the BOE, Sprint makes two purchases from two different contracts: it purchases 7 DS1 interconnection facilities from the ICA to be used for Interconnection, and it also purchases 21 DS1 non-interconnection transmission facilities from AT&T's special access tariff to be used for backhaul. Sprint BOE at 39. Under its DS1/DS1 equivalent pricing proposal, Sprint will pay 7 times the prorated DS1 TELRIC price (i.e., one-quarter of the DS3 TELRIC price) for the 7 DS1 interconnection Facilities purchased from the ICA. (It will also pay the prorated DS1 tariffed price, or three-quarters of the tariffed DS3 price, for the 21

transmission facilities purchased from the special access tariff.) The prorated DS1 TELRIC price is one twenty-eighth of the DS3 TELRIC price and is lower than the TELRIC price the Commission specifically established for DS1 transmission facilities. Staff Ex. 1.0 at 72. It is undeniable that, under its DS1/DS1 equivalent pricing proposal, Sprint will pay for DS1 Interconnection Facilities at a price below the DS1 TELRIC price that the Commission has established. The DS1 TELRIC price is a cost-based price established by the Commission. Therefore, contrary to its assertion, Sprints' DS1/DS1 equivalent pricing does result in below-cost provision of facilities by AT&T.

In addition, Sprint also proposes new language for Section 3.8.2.2 of Attachment 2. Sprint BOE at 41-42. Sprint's new proposed language suffers the same deficiencies as the originally-proposed language for Section 3.8.2.2. As Staff noted, an ICA is a binding contract between the parties that specifies the rates, terms and conditions governing the services provisioned under the contract. Accordingly, neither party should be automatically entitled to different rates, terms or conditions without amending the ICA. Staff Ex. 1.0 at 73. The Commission should similarly reject Sprint's new proposed language for Section 3.8.2.2 of Attachment 2.

ISSUE 15

> *AT&T Illinois Description of Issue 15: Should the POI serve as both the physical and financial demarcation point between the parties' networks?*
>
> *Sprint Description of Issue 15: What is the appropriate definition of the "Point of Interconnection"?*

Response to Sprint:

Staff took no exception to the PAD language on Issue 15, and continues to maintain its position and to support the PAD language on this issue. Staff BOE; Staff IB at 26-28; Staff RB at 19-24; PAD at 34-35.

ISSUE 46

AT&T Illinois Description of Issue 46: Should the parties share the cost of TELRIC priced facilities on Sprint's side of the POI?

Sprint Description of Issue 46: Should Interconnection Facilities cost be equally shared (50/50 basis)?

Response to Sprint:

Staff took no exception to the PAD language on Issue 46, and continues to maintain its position and to support the PAD language on this issue. Staff BOE; Staff IB at 26-28; Staff RB at 19-24; PAD at 25-28.

ISSUE 47

AT&T Illinois Description of Issue 47: Should Attachment 2 contain billing terms specific to Interconnection Facilities?

Sprint Description of Issue 47: Should the Billing Party discount the invoice for Interconnection Facilities by fifty (50%) to reflect an equal sharing of the costs?

Response to Sprint:

Staff took no exception to the PAD language on Issue 47, and continues to maintain its position and to support the PAD language on this issue. Staff BOE; Staff IB at 26-28; Staff RB at 19-24; PAD at 25-28.

ISSUE 49

AT&T Illinois Description of Issue 49(a): Should the ICA include AT&T's language to address the interim period between the Effective Date and the implementation of the section 251(c)(2) interconnection arrangements set forth in Attachment 2?

AT&T Illinois Description of Issue 49(b): What rates, terms and conditions should apply to convert from the existing interconnection arrangement to the 251(c)(2) interconnection arrangement?

Sprint Description of Issue 49: Should AT&T require Sprint to issue ASRs and be allowed to charge Sprint for any billing reclassifications or changes to the existing interconnection arrangements to receive TELRIC-based rates?

Response to Sprint:

Staff took no exception to the PAD language on Issue 49, and continues to maintain its position and to support the PAD language on this issue. Staff BOE; Staff IB at 28-30; Staff RB at 24-26; PAD at 28-31.

VI. IP Interconnection

ISSUES 1, 11, AND 18

Sprint Description of Issue 1: Should this Agreement preclude the exchange of Information Services traffic; or, require that traffic be exchanged in TDM format?

AT&T Illinois Description of Issue 1(a): Should the ICA provide for IP-to-IP interconnection or should it provide that all traffic that Sprint delivers to AT&T under the ICA must be delivered in TDM format?

Joint Party Description of Issue 11: Should terms and conditions regarding IP Interconnection be included in the Agreement?

AT&T Illinois Description of Issue 18: Should the ICA address POIs for IP-to-IP interconnection and, if so, is Sprint's proposed language just and reasonable?

Sprint Description of Issue 18: How and where will IP POIs be established?

Response to Sprint:

Sprint begins its criticism of the PAD's determination regarding IP Interconnection by stating "Sprint takes exception to the ALJ's decision not to address Sprint's demand that AT&T negotiate terms and conditions for Internet protocol (IP) interconnection." Sprint BOE at 47. The Commission should disregard this criticism of

the PAD. The instant proceeding is an arbitration proceeding being held pursuant to Section 252 of the Telecommunications Act of 1996. 47 U.S.C. § 252 (2012). The fundamental premise of the arbitration provisions of Section 252 of the Federal Telecommunications Act is that when two parties cannot agree on rates, terms, and conditions to be included in an interconnection agreement, the Commission, as arbiter, can impose the rates, terms, and conditions proposed by one of the Parties. Staff Ex. 1.0 at 19. However, for the Commission to determine, based upon Sprint's request, that it can and will compel AT&T Illinois to interconnect on an IP-to-IP basis, it is incumbent upon Sprint to present the Commission with specific proposed rates, terms, and conditions for IP-to-IP interconnection that are technically feasible and compliant with the requirements imposed upon AT&T Illinois pursuant to Section 251 and 252 of the Federal Telecommunications Act. *Id.* Sprint has done no such thing. *Id.* at 10. Thus, any inability of Sprint to obtain rates, terms, and conditions for IP Interconnection in this arbitration lies squarely with Sprint because of its failure to provide rates, terms, and conditions for the Commission to consider. Furthermore, it is self-evident that a party seeking to obtain negotiated IP Interconnection rates, terms, and conditions would develop and present such proposed rates, terms, and conditions to the other party. Sprint's failure to do so, and instead, its pursuit of general pronouncements and determinations based on vague and ill-defined technical proposals, make its criticism of AT&T Illinois' willingness to negotiate in good faith ring hollow.

Additionally, the ALJ's decision does address negotiations. In particular, despite the fact that Sprint has not proposed rates, terms, and conditions for IP-to-IP interconnection that are technically feasible and compliant with the requirements

imposed upon AT&T Illinois pursuant to Section 251 and 252, the PAD allows Sprint (and AT&T Illinois, if it so desires) to develop such rates, terms, and conditions and, if necessary, to seek a Commission determination to impose the rates, terms, and conditions proposed by one of the Parties. In effect, despite its failure to provide IP Interconnection rates, terms, and conditions, Sprint is given another bite at the arbitration apple. PAD at 34. While the import of these issues warrants such a determination, Sprint's criticism of the PAD in the face of such magnanimity is inappropriate.

In reality, what Sprint seeks in this proceeding is leverage in the negotiation process. Sprint argues that "[t]he Commission should reverse the PAD and help turn good-faith negotiations into something tangible." Sprint BOE at 63. Ironically, Sprint's idea of "something tangible" is for the Commission to "confirm that IP interconnection will occur at Sprint's option, and allow the parties to then negotiate specific terms and conditions following a request." *Id.* at 73 (emphasis added). That is, Sprint is not seeking approval of specific IP Protocol proposal (because it has offered none), but rather asking the Commission to require AT&T Illinois to negotiate IP Interconnection with the playing field tilted in Sprint's favor (i.e., asking the Commission to determine that there are rates, terms, and conditions interconnection that are technically feasible and compliant with the requirements imposed upon AT&T Illinois pursuant to Section 251 and 252 even though Sprint has not identified these rates, terms, or conditions or shown them to be technically feasible and compliant with the law). Sprint's request is deeply flawed and the PAD was correct to reject it.

Not satisfied with mere criticism of the PAD, Sprint resorts to threats. In Sprint's exceptions to the PAD's determinations regarding IP Interconnection, Sprint implies that the ALJs are advocating the Commission be derelict in its duties. "The ALJ's have proposed that the Commission defer and thereby fail 'to carry out its responsibility' to resolve open issues presented." *Id.* at 63. Sprint includes a thinly veiled threat that if this decision is not changed that "Sprint would have the ability to go directly to the FCC for resolution" and that "this important decision would potentially be taken out of this Commission's hands." *Id.* As described herein, the PAD resolves the open issues in this proceeding, and does so properly. Sprint's criticism is unequivocally incorrect and its threat should be strongly rebuked.

Further, Sprint's threat is in no way credible. In its recent CAF Order, the FCC addressed the questions of whether IP-to-IP interconnection can and should be required pursuant to Section 251 of the Federal Telecommunication Act and determined to seek further information rather than decide this issue. *See*, *e.g.*, Federal Communications Commission, In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up Universal Service Reform – Mobility Fund, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135. WC Docket No. 05-337, CC Docket No. 01-92. CC Docket No. 96-45, WC Docket No. 03-109; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking at ¶ 1389 (November 18, 2011) ("Transitional Order"). It is unclear why Sprint believes the FCC would reach a determination any different than

the one it recently did given that Sprint offers no rates, terms, and conditions for IP Interconnection that the FCC could rely upon to determine that there are IP interconnection arrangements that are technically feasible and compliant with the requirements imposed upon incumbent local exchange carriers pursuant to Section 251 and 252.

The remainder of Sprint's arguments with respect to the IP Interconnection Issues are replete with misleading information that gives the false appearance that Sprint has offered some type of IP Interconnection plan that the Commission could find technically feasible. To be clear, there is only one element of Sprint's IP Interconnection proposal that might be considered (although it is not) an actionable rate, term, or condition of IP Interconnection. That is, Sprint proposed to exchange traffic in IP format at the existing internet exchange points where Sprint and AT&T (or its affiliates) are currently interconnected. Staff Ex. 1.0 at 12. Several of the exchange points Sprint identified were located outside of Illinois and outside of AT&T Illinois' incumbent carrier network. *Id.* at 12-13. Similarly, the Sprint proposal called for points of interconnection located both inside and outside of Illinois to be utilized for the exchange of regional traffic, e.g., traffic in and between multiple states. Sprint Ex. 1.0 at 35. As Staff noted, Sprint's proposal was not consistent with the interconnection requirements contained in Section 251(c)(2) of the Federal Telecommunications Act. Staff IB at 31. In particular, Section 251(c)(2) of the Federal Telecommunications Act requires interconnection at "technically feasible point within the carrier's network," 47 U.S.C. § 251(c)(2)(B), and the points identified by Sprint include points located outside of AT&T Illinois' incumbent carrier network. Additionally, the Commission's

Interconnection rules permit ILECs to require at least one technically feasible point of interconnection within a local access and transport area, 83 Ill. Admin. Code § 790.310(a)(2), and Sprint's language referenced only one interconnection point in Illinois (identified as "Chicago") despite the fact that there are numerous local access and transport areas in Illinois. Thus, the lone IP Interconnection plan rate, term, or condition offered by Sprint was inconsistent with the requirements of Section 251 of the Act and the FCC and ICC rules and regulations implementing it.

Sprint has subsequently revised its position and now proposes that "Sprint and AT&T ILLINOIS will exchange Authorized Services traffic at the AT&T Corp. switch that serves AT&T's Illinois U-verse operations or such additional IP POIs as may be mutually agreed. It is both feasible and efficient for the parties to exchange voice traffic, in IP, at this location." Sprint BOE at 73. As with its initial proposal, despite the fact that the Commission's Interconnection rules require ILECs to provide at least one technically feasible point of interconnection within a local access and transport area, 83 Ill. Admin. Code § 790.310(a)(2), the Sprint language references would allow Sprint to employ a single interconnection point in Illinois or at fewer points than there are LATAs. "With IP Interconnection, virtually all of these POIs can eliminated and replaced with 1-2 IP POIs." Sprint BOE at 69. Thus, the Sprint proposal, like its predecessor, fails to comply with the requirements of Section 251 of the Act or the FCC and ICC rules and regulations implementing it.

Apart from this compliance problem, Sprint's proposal is so vague that it is impossible to determine whether it is technically feasible or complies with other aspects of the Section 251 requirements. In essence, Sprint is relying on limited evidence that

some types of IP traffic can under some circumstances be delivered to an AT&T Corp. switch for termination to some AT&T Illinois customers to assert that the exchange of all traffic at such a point can fit within a comprehensive IP Interconnection architecture that is technically feasible and complaint with Section 251 of the Act. Sprint's showing does not warrant Sprint's proposed conclusion. For example, relying exclusively on such an interconnection point might require local Interconnection Facilities that cross MTAs. It could impose upon AT&T Illinois a regulatory obligation to translate its current TDM traffic to IP traffic in cases where no such translation is currently necessary. Ironically, viewing these issues myopically, Sprint elsewhere argues that "[u]necessary conversions from IP to TDM for regulatory purposes alone are economically wasteful and should be discoursed." *Id.* at 60. These examples are only two of the scores of technical aspects that would need to be identified with respect to a comprehensive and potentially workable IP Interconnection proposal. Without a full and complete description of these technical aspects, and certainly in the absence of any such detail, the Commission does not have the information it needs to determine whether Sprint's proposal is part of an IP Interconnection proposal that is both technically feasible and compliant with Section 251 of the Act.

Despite the concerns with Sprint's positions identified above, Staff does not dispute that Sprint has raised valid concerns with respect to certain of AT&T Illinois' positions. For example, like Sprint, Staff is concerned that AT&T Illinois should not be able to use affiliates to shield itself from its obligations, Staff believes there are strong policy reasons to support the Commission's exercise of authority over IP interconnection, and Staff is concerned that AT&T Illinois should not be allowed to

discriminate in favor of itself. *Id.* at 66-71. While Staff shares these concerns, the Commission does not have before it an IP Interconnection proposal that is both technically feasible and compliant with Section 251 of the Act and that would require and allow the Commission to make informed determinations on these issues as they concern and are related to such an IP Interconnection proposal.

In summary, Sprint claims that the PAD will "deny Sprint the interconnection it has requested." *Id.* at 72. That statement is false. Sprint did not present IP Interconnection rates, terms, or conditions and the PAD was correct in declining to adopt undefined half measures. More pointedly, however, the PAD did not foreclose Sprint from any form of IP Interconnection. Quite the opposite, the PAD actually preserves Sprint's right to seek IP Interconnection if and when Sprint actually develops rates, terms, and conditions for such Interconnection. For all the above reasons, the Commission should reject Sprint's exceptions with respect to the IP Interconnection Issues.

VII. Transit

ISSUE 43

Joint Description of Issue 43: What is the appropriate rate that a Transit Service Provider should charge for Transit Traffic Service?

Response to Sprint:

Sprint devotes 15 pages to Issue 43, an issue it largely won. Sprint frames the overall issue as: "The key legal question is whether AT&T is required to provide Transit Service to competitors at regulated TELRIC rates pursuant to Section 251 of the Act." Sprint BOE, at 90. In Staff's view, however, that is precisely what the PAD concluded.

It appears to Staff that Sprint has two remaining issues with the PAD. One, Sprint wants the PAD to expressly rule that Section 251(c) requires AT&T to provide

transit at TELRIC rates. *Id*., 90-92. As The PAD notes, Staff is unaware of any FCC order requiring transit at TELRIC rates. PAD, at 42. Nonetheless, Staff agrees with Sprint that: "The Commission should invoke state law (as well as federal law) and order AT&T to provide Transit Service at TELRIC rates." Staff argued, and the PAD adopted, the fact that the Commission in the past had ordered transit at TELRIC rates based upon the underlying policies of both state and federal law. PAD, at 45. Staff accepts the PAD reasoning in reaching its decision on Issue 43, while it also recommends that the Commission reject Sprint's argument that this decision needs to specifically rely upon Section 252(c).

Second, Sprint remains concerned about the interim period between the effective date of this arbitration agreement and the time when the Commission will adopt new TELRIC rates for transit. Sprint for the first time raises the issue of a true-up for the interim period. Because Sprint, despite exhaustively briefing this issue, only raised the true-up in its BOE, Staff will not address it.

Response to AT&T:

AT&T states that: "The PAD correctly recognizes that neither federal law nor state law authorizes the Commission to require AT&T Illinois to provide transit service at TELRIC-based rates." This is not accurate. The PAD does state that the "pricing of transit services is not explicitly required" by federal law or state law. PAD, at 45. Nonetheless, Staff argued that the Commission had in the past required transit priced at TELRIC rates based upon the underlying pro-competitive policies found in both federal and state law. *Arbitration Decision*, MCI Telecommunications Corp. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to

Establish and Interconnection Agreement with Illinois Bell Tel. Co. d/b/a Ameritech Illinois, ICC Docket No. 96-AB-006, 1996 WL 33660256 (Dec. 17, 1996) ("1996 MCI Arbitration")(at *16) ("[W]e clearly reserve[] the issue of whether public policy concerns might cause the Commission to impose transiting as an obligation on an incumbent local exchange carrier if the parties present it as an unresolved issue in an arbitration."); *see also Second Interim Order, Investigation into forward looking cost studies and rates of Ameritech Illinois for interconnection, network elements, transport and termination of traffic, ICC docket Nos. 96-0486/0569 (consol.), 1998 WL 34302124 (Ill. I.C.C. slip op.) (Feb. 17, 1998)* (*TELRIC I Order),* at *69-70 (The proceeding in which the Commission set transit services at TELRIC rates.). The PAD adopted this reasoning. PAD, at 45.

AT&T next focuses on Section 13-801 of the PUA. AT&T argues that Section 13-801: "[C]annot be read to authorize the Commission to require transit service at TELRIC rates." AT&T BOE, at 14. While Section 13-801 does not "explicitly" require transit service at TELRIC rates, however, AT&T misses the point. The point is that the Commission has found that the pro-competitive policies underlying the PUA do allow it to require transit service at TELRIC rates. *See* 1996 MCI Arbitration, at *16; *TELRIC I Order,* at *69-70.

AT&T then contends that Section 13-801 is meaningless because AT&T is no longer "subjected to any requirement under section 13-801 that exceeds the requirements of federal law." AT&T BOE, at 14. Again, this argument is wide of the target. Staff agrees that AT&T is no longer subject to alternative regulation and thus no longer "subjected to any requirement under section 13-801 that exceeds the requirements of federal law." First, it is the underlying policy provisions that allow the

Commission to require AT&T to provide transit services at TELRIC rates, not any specific 13-801 requirements.

Second, although the FCC has never required transit at TELRIC prices it has also never precluded transit priced at TELRIC rates. Importantly, however, as Dr. Rearden explained, the federal Act was intended to open up the local market to competition. Staff IB, at 42. To facilitate competition, he explained, the Act requires incumbent providers to provide inputs that are not easily duplicated by entrants. That is, the expense needed to re-create an ILEC's connections to multiple carriers makes entry risky, which discourages entry. *Id.* This incumbent's advantage gives AT&T Illinois the market power to charge rates above costs. Above-cost prices results in reduced use of the telecommunications and lowers consumer welfare. *Id*. It is this federal policy that underpins the federal Act.

Likewise, similar policy concerns support the PUA. In fact, the Illinois GA has mandated that the "Commission shall require the incumbent local exchange carrier to provide interconnection . . . in any manner technically feasible to the fullest extent possible to implement the maximum development of competitive telecommunications services offerings." 220 ILCS § 5/13-801(a). While the specific requirements of section 13-801 may not apply to AT&T, surely the GA's clear intention to "implement the maximum development of competitive telecommunications services offerings" still applies, as it has neither been withdrawn nor repealed.

Consequently, the PAD's conclusion is entirely consistent with federal law. In fact, the Commission specifically addressed this issue in the 1996 MCI Arbitration, and found that:

> The vital public interest in efficient carrier interconnection at reasonable rates necessitates that we impose this interconnection obligation on Ameritech Illinois, and we find that our doing so *is fully consistent with the terms and policies of the 1996 Act and FCC Order, as well as Illinois law*. At a minimum, transiting will facilitate the indirect interconnection contemplated by Section 251(a)(1) of the 1996 Act.

1996 MCI Arbitration at *16 (emphasis added).

In sum, AT&T confuses Staff's position in that it does not recognize that the public policies underpinning both the PUA and the 1996 federal act support requiring transit services to be priced at TELRIC.

Staff, accordingly, recommends that the Commission adopt the PAD's analysis and conclusion on Issue 43.

VIII. Section 251(b)(5): Scope of IntraMTA Bill and Keep

ISSUE 5

> *Sprint Description: What is the appropriate definition of "Section 251(b)(5)" tariffs?*
>
> *AT&T Illinois Description: Should the Agreement contain a definition of Section 251(b)(5) Traffic? If so, what is the appropriate definition?*

Response to Sprint:

Staff took no exception to the PAD language on Issue 5, and continues to maintain its positions and to support the PAD language on these issues. Staff BOE; Staff IB at 44-45; Staff RB at 34-36; PAD at 47-48. However, Staff will address some arguments made by Sprint in its BOE. *See* Sprint BOE at 115. Specifically, Sprint argues that "the ALJs found that including an accurate definition of 'Section 251(b)(5) Traffic' 'could potentially cause confusion or otherwise implicitly impact other definitions within the ICA.'" *Id.* (*citing* PAD at 47). Here Sprint inappropriately reclassifies the issue in its BOE, assuming that all parties and the ALJs agree with Sprint's definition of

Section 251(b)(5) traffic, which is clearly not the case, and then mischaracterizes the ALJs' decision because it does not support Sprint's proposal. Sprint BOE at 115.

To be clear, the ALJs did not find that "including an accurate definition of 'Section 251(b)(5) Traffic" in the ICA would be confusing; the ALJs found that "including a definition of Section 251(b)(5) traffic, as proposed by Sprint, is unnecessary and could potentially cause confusion or otherwise implicitly impact other definitions within the ICA." PAD at 47. In the Commission Analysis and Conclusion section of the PAD, the ALJs specifically acknowledge that AT&T Illinois disputed Sprint's proposed definition. "AT&T proposes to omit this definition on the basis that it is overly general and as such could potentially include traffic that is not Section 251(b)(5) Traffic." Id. Indeed, even Sprint's characterization of this issue, "[w]hat is the appropriate definition of 'Section 251(b)(5)' traffic," shows that Sprint at least at one point acknowledged whether its proposed definition was "an accurate definition" was at issue. *Id.* at 114. Thus, Sprint mischaracterizes the PAD when its states that the ALJs found its definition of Section 251(b)(5) Traffic to be accurate and that the issue is one of whether or not to include an accurate 251(b)(5) Traffic definition in the Interconnection Agreement.

The PAD rejects Sprint's inclusion of a definition of Section 251(b)(5) Traffic because it "could potentially cause confusion or otherwise implicitly impact other definitions within the ICA." PAD at 47. . While Sprint does not acknowledge it, it is clear that Issue 5 encompasses the question of whether any definition of Section 251(b)(5) traffic should be included in the Interconnection Agreement at all. *See id.* Even if, for the sake of argument, one presumes Sprint's definition of Section 251(b)(5) Traffic is accurate, it does not follow that cross referencing the definition of Section 251(b)(5)

Traffic in other definitions is appropriate or accurate. Following this logic, the ALJs determined there should be no definition of Section 251(b)(5) traffic included in the ICA by cross-reference. PAD at 47-48. Instead, the ALJs ordered that the "[i]ncluding the origination and termination provision directly into other application definitions within the ICA will aid in clarity and negate the need to cross-reference definitions." PAD at 48. This is entirely appropriate, and the Commission should affirm its decision.

ISSUE 6

Joint Party Description: What is the appropriate definition of "IntraMTA Traffic"?

Response to Sprint:

Staff took no exception to the PAD language on Issue 6, and continues to maintain its position and to support the PAD language on this issue. Staff BOE; Staff IB at 46-48; Staff RB at 36-38; PAD at 49-51.

ISSUE 37

Sprint Description of Issue 37: Should IntraMTA Traffic be exchanged on a bill and keep basis?

AT&T Illinois Description of Issue 37: Should IntraMTA Traffic be subject to bill and keep without exception?

No party took exception to the PAD's conclusion on Issue 37, so there is nothing to which Staff can respond.

ISSUE 70

Joint Description of Issue 70: Which Party's' Pricing Sheets and rates should be adopted?

Response to Sprint:

Staff took no exception to the PAD language on Issue 70, and continues to maintain its position and to support the PAD language on this issue. Staff BOE; Staff IB at 49-50; Staff RB at 39; PAD at 63-66.

IX. InterMTA Traffic

ISSUES 7 AND 8

> *Joint Party Description of Issue 7: What are the appropriate definitions related to "InterMTA Traffic"?*
>
> *Sprint Description of Issue 8: What, if any, is the appropriate definition of "Switched Access Service"?*
>
> *AT&T Description of Issue 8: What is the appropriate definition of "Switched Access Service"?*

Response to Sprint:

Staff took no exception to the PAD language on Issues 7 and 8, and continues to maintain its position and to support the PAD language on these issues. Staff BOE; Staff IB at 50-56; Staff RB at 39-41; PAD at 53.

However, Staff will address one point made by Sprint in its BOE. *See* Sprint BOE at 116. Specifically, Sprint argues that "[b]ecause AT&T's proposal does not recognize [the distinction between Non-Toll InterMTA Traffic and Toll Inter-MTA Traffic], it must be rejected as contrary to the FCC's current rules. Id. Staff notes that the FCC's rules and the FCC's CAF Order make no mention of Non-Toll InterMTA Traffic and Toll Inter-MTA Traffic. These terms are Sprint creations in this proceeding.

In the CAF Order, the FCC altered its CMRS related intercarrier compensation rules; establishing that "[n]otwithstanding any other provision of the Commission's rules, by default, transport and termination for Non-Access Telecommunications Traffic exchanged between a local exchange carrier and a CMRS provider within the scope of

§51.701(b)(2) shall be pursuant to a bill-and-keep arrangement, as provided in §51.713." 47 CFR § 51.705(a). In adopting these revisions, the FCC, however, left unaltered its §51.701(b)(2) rule stating that "For purposes of this subpart, Non-Access Telecommunications Traffic means: … Telecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter." Thus, the FCC did not in its CAF Order establish separate compensation regimes for "Toll InterMTA Traffic" and "Non-Toll InterMTA Traffic." The Commission should reject any implication to the contrary.

ISSUE 36

> *Sprint Description of Issue 36: What categories of Authorized Services traffic are subject to compensation between the Parties?*
>
> *AT&T Illinois Description of Issue 36(a): Should the ICA include compensation terms for Sprint's term "Non-Toll InterMTA Traffic"?*
>
> *AT&T Illinois Description of Issue 36(b): What is the appropriate compensation for mobile-to-land InterMTA Traffic?*

Response to Sprint:

Staff agrees with the PAD on Issue 36, which decided in AT&T's favor. Sprint's BOE does not provide any new arguments. Its position is built on the faulty premise that interMTA traffic should be disaggregated into Toll and Non-Toll InterMTA traffic. Sprint BOE at 116-117. This question has been thoroughly addressed by all the parties in this proceeding. Staff believes that the record is clear that Sprint's attempt to distinguish between Toll and Non-Toll is misguided and not supported by the record. *See e.g.*, Staff IB at 56-58.

ISSUE 39 AND 40

Sprint Description of Issue 39: What is the appropriate compensation for Non-Toll InterMTA Traffic?

AT&T Illinois Description of Issue 39(a): Should the ICA include compensation terms for Sprint's term 'Non-Toll InterMTA Traffic?

AT&T Illinois Description of Issue 39(b): What is the appropriate compensation for mobile-to-land InterMTA Traffic?

AT&T Illinois Description of Issue 39(c): Should the ICA include terms for AT&T to estimate the percentage of mobile-to-land InterMTA Traffic, if any, improperly routed over trunks obtained pursuant to the ICA and bill Sprint for terminating access in accordance with that percentage?

AT&T Illinois Description of Issue 39(d): Should the ICA obligate Sprint to provide JIP in the call records for its originating IntraMTA and InterMTA Traffic or permit AT&T to use alternate methods to determine jurisdiction?

Sprint Description of Issue 40: What is the appropriate compensation for Toll InterMTA Traffic?

AT&T Illinois Description of Issue 40(a): Should the ICA include compensation terms for Sprint's term "Toll InterMTA Traffic"?

AT&T Illinois Description of Issue 40(b): What is the appropriate compensation for mobile-to-land InterMTA Traffic?

Response to Sprint:

Staff agrees with the PAD's conclusions on Issues 39 and 40, which were decided in AT&T's favor. In essence, the PAD ruled that Sprint needs to pay AT&T terminating access charges for all interMTA traffic delivered to AT&T customers; and AT&T has the right to collect the information necessary to determine the appropriate charges to assess on Sprint traffic. The PAD correctly interpreted the CAF order, which clearly stated that the ILEC can assess access charges on for all traffic that crosses the MTA boundary. Staff IB at 60.

Sprint, on the other hand, argues that the ICA should distinguish between Toll and Non-Toll InterMTA traffic. Its position is that the only interMTA traffic for which

AT&T should be permitted to recover access charges on is Toll InterMTA traffic. Sprint BOE at 110-111. Sprint states that Toll traffic is traffic on which the provider assesses additional charges for the calls. Sprint notes that most of its customers have nation-wide calling plans that do not assess a charge to traverse an MTA boundary. Thus, most of Sprint's InterMTA traffic is Non-Toll, and only a *de minimus* amount of InterMTA traffic is Toll. *Id*. at 107. As a result, the vast majority of its InterMTA should be subject to bill and keep. However, despite its valiant attempts to get around this clear implication of the CAF order, and as has been noted in Staff's briefs and explained in the PAD, the FCC clearly stated in its CAF order that all InterMTA calls were subject to access charges. Staff IB at 60.

Further, Sprint objects to language mandating that it populate the Jurisdictional Information Parameter ("JIP"), since there are continuing industry discussions. Sprint BOE at 117-118. AT&T's proposed language allows, in Attachment 2, 6.4.1.3, that absent the JIP, AT&T Illinois will be able to use various other methods to estimate the jurisdiction of the traffic exchanged between the Parties. Staff IB at 58-59. The PAD correctly ruled that AT&T's proposed language is reasonable, and noted that AT&T appears willing to use a different indicator if there is a more accurate way to identify the calls' status as either InterMTA or IntraMTA. PAD at 62.

ISSUE 41

> *Sprint Description of Issue 41: Is either Party entitled to collect compensation on any of its originated traffic? If so, what originated traffic is subject to such compensation and at what rate?*
>
> *AT&T Illinois Description of Issue 41: Is AT&T entitled to collect switched access charges on its originating InterMTA traffic? If so, at what rate?*

Response to Sprint:

Staff agrees with Sprint that the proposed decision for Issue 41 should be changed. AT&T should not be allowed to charge Sprint originating access on interMTA traffic that is routed over interconnection trunks. However, Staff's reasoning differs from Sprint's logic. Sprint argues that none of the traffic traversing the interconnection trunks between it and AT&T is toll traffic. Hence, it contends that no access charges should be assessed on traffic that either a Sprint customer originates or an AT&T customer-originates. Sprint BOE at 118-119.

Staff advocated changing the decision on this issue based on different reasons. As Staff explained in its BOE, this scenario only occurs when the AT&T customer's call is InterMTA, but seems to be IntraMTA. Since the information that AT&T needs is missing, Staff then posited that AT&T should be allowed to route the call over the interconnection trunks. Otherwise, Sprint must assume the obligation to route the calls, which is typically the responsibility that falls to the calling customer's IXC. However, Sprint does not earn long distance charges from the caller, because the caller is not a Sprint Long Distance customer. In these circumstances, Sprint should not be required to pay originating access costs, which are only due to the misrouting of the call. Thus, Sprint's proposed language better corresponds to the way Sprint-originated InterMTA Traffic is compensated than AT&T Illinois' proposed language.

X. Miscellaneous

ISSUE 13

AT&T Illinois Description of Issue 13(a): Should the definition of Interconnection be based on both Part 51 and Part 20 of the FCC's rules?

AT&T Illinois Description of Issue 13(b): Should there be a distinction between "Interconnection", as defined in 47 C.F.R. Section 51.5, and "interconnection"?

Sprint Description of Issue 13: Should this Agreement include provisions regarding indirect interconnection?

Response to Sprint:

Staff took no exception to the PAD language on Issue 13, and continues to maintain its position and to support the PAD language on this issue. Staff BOE; Staff IB at 62-64; Staff RB at 46-48; PAD at 3-5. Staff takes exception, however, to Sprint assertions made in its BOE and responds herein.

First, Sprint asserts that it "has only one chance to obtain an ICA with AT&T in Illinois. As such, what rights it has under Part 20 must be woven into the ICA." Sprint BOE at 25. Staff does not agree with either part of Sprint's assertion. Staff knows of no laws or regulation that limits Sprint to "one chance" in its ability to negotiate a contract with AT&T. Even if all its rights under Part 20 "must be woven into the ICA," this does not mean that all its rights under Part 20 must be woven under Section 251(c)(2) or that all of Sprint's interconnection "must be woven" under Section 251(c)(2) or into Section 251(c)(2) interconnection (i.e., Interconnection). The parties' ICA provides rates, terms and conditions for Section 251(c)(2) interconnection (i.e., Interconnection as defined by AT&T) as well as for non-Section 251(c)(2) interconnection.

Sprint also contends that the PAD's decision on Issue 13 "will have forced the formation of an integrated agreement that does not address all relevant and necessary terms." Sprint BOE at 25. This is disingenuous. The PAD's adoption of AT&T's proposed definition of the term "Interconnection" does not in any way preclude Sprint from forming an integrated agreement that addresses all relevant and necessary terms. AT&T's definition of "Interconnection" refers to a specific subset of interconnection:

interconnection under Section 251(c)(2) or Section 251(c)(2) interconnection. In other words, it refers to the subset of interconnection for which Sprint is entitled to obtain transmission facilities at TELRIC prices under Section 251(c)(2). The parties' ICA provides rates, terms and conditions for Section 251(c)(2) interconnection (or Interconnection) as well as for non-Section 251(c)(2) interconnection. Not having all Sprint's interconnection needs (i.e., Section 251(c)(2) and non-Section 251(c)(2) interconnection) woven under Section 251(c)(2) does not force "the formation of an integrated agreement that does not address all relevant and necessary terms" as Sprint asserts. It does, however, as it should, prevent Sprint from obtaining transmission facilities at TELRIC prices for non-Section 251(c)(2) interconnection for which it is not entitled to cost-based pricing treatment under Section 251(c)(2).

ISSUE 50 AND 51(a)

> *Joint Party Description of Issue 50: Should the definition of "Cash Deposit" and "Letter of Credit" be Party neutral?*
>
> *AT&T Description of Issue 51(a): Should the deposit requirement apply to both parties or only to the requesting carrier?*

Response to Sprint:

Staff took no exception to the PAD language on Issue 50/51(a), and continues to maintain its positions and to support the PAD language on these issues. Staff BOE; Staff IB at 64-66; Staff RB at 48-50; PAD at 69-70.

ISSUE 51/51(b)/51(c)/51(d)

> *Sprint Description of Issue 51: What assurance of payment language should be included in the Agreement?*
>
> *AT&T Illinois Description of Issue 51(b): Should the ICA provide that no deposit requirement is required as of the Effective Date based upon Sprint's and AT&T's dealings with each other under their previous interconnection agreements?*

AT&T Illinois Description of Issue 51(c); Under what circumstances should a deposit be required and what should be the amount of the deposit?

AT&T Illinois Description of Issue 51(d): What other terms and conditions governing deposits should be included in the ICA?

Response to Sprint and AT&T:

Staff took no exception to the PAD language on Issue 51(b)/51(c)/51(d), and continues to maintain its positions and to support the PAD language on these issues. Staff BOE; Staff IB at 66-69; Staff RB at 50-54; PAD at 69-70. Staff, however, will respond to certain specific arguments made by AT&T and Sprint, which Staff recommends the Commission ignore in their entirety. *See* AT&T BOE at 17-18; Sprint BOE at 119-123.

While the PAD does not adopt Staff's proposal on Issue 51(c), Staff took no exception to the PAD language on Issue 51(c). Staff continues to refrain from taking exception to that language, but does respond here to certain arguments made by Sprint in its BOE. *See* Sprint BOE at 120 – 121. Specifically, Sprint argues that the amount of the deposit should not be up to three months' anticipated billing. *Id.* The Commission should ignore the arguments made by Sprint on this issue.

First, Sprint argues that this amount of a deposit "risks being disproportionately high in relation to the amount the Billed Party has failed to pay." *Id.* at 121. However, this is incorrect. The law is clear that the Commission would allow a deposit up to four month's on annual billings for business services. 83 Ill. Admin. Code § 735.120(a). Moreover, Sprint seems to ignore that at the point a deposit would be required; an analysis would have already indicated impairment of that party's credit, financial health, or credit worthiness. PAD at 70; Sprint BOE at 119-120. In Staff's view, once a deposit

requirement is triggered, capping deposits at "the larger of one month's billing or the undisputed past due amount" would result in risking disproportionately low deposit amounts. *See* Sprint BOE at 121. First, if a party failed to pay an undisputed past due amount, requiring a deposit in that amount after the fact will not provide the protections that should be afforded by a deposit requirement. Next, one month's billing could be a very low amount in comparison to the amounts billed by either party, and would not afford those protections provided by a deposit requirement. Therefore, Staff recommends the Commission ignore Sprint's arguments, and instead reaffirm the language in the PAD. Staff also recommends the Commission ignore AT&T's proposed language for Issue 51(c) as unnecessary; the PAD is clear and needs no expounding to make the PAD more "explicit." *See* AT&T BOE at 17-18.

Sprint brings up, for the first time in this docket, three new "issues" under Issue 51(d) it contends were decided incorrectly by the ALJs. Sprint BOE at 121-123. Sprint's three arguments are that (1) "AT&T should not be able to draw on a Letter of Credit or a Surety Bond upon expiration or termination of the ICA;" (2) "AT&T should not be relieved of its obligations to perform under the ICA if Sprint has not furnished AT&T with the assurance of payment within 15 days after it is requested;" and (3) "AT&T should not be allowed to terminate the ICA if Sprint fails to provide AT&T the assurance payment it has requested 'or otherwise fails to make any payment or payments required under this ICA in the manner and within the time required.'" *Id.* Sprint makes somewhat more details arguments to support these positions, but ignores the fact that in previous briefs it represented that "[t]he only point in dispute with respect to other

terms and conditions governing deposits is when required deposits should be returned." Sprint IB at 127.

As was made clear by Sprint, the only issue ever addressed in the record with regard to Issue 51(d) was when a deposit should be returned. *See id.* Sprint failed to bring these issues up at the proper time, and therefore forfeited its opportunity to have the Commission consider them. To consider these arguments now would unfairly prejudice the other parties to this proceeding. Therefore, Staff urges the Commission to ignore Sprint's new arguments, and reaffirm the PAD language on Issue 51(d).

ISSUE 52

> *Joint Description: Is it appropriate to include good faith disputes in the definitions of "Non-Paying Party," or "Unpaid Charges"?*

Response to AT&T:

Staff took no exception to the PAD language on Issue 52, and continues to maintain its positions and to support the PAD language on these issues. Staff BOE; Staff IB at 69-70; Staff RB at 54-55; PAD at 72-73.

ISSUE 53

> *AT&T Illinois Description of Issue 53(a): Should a party that disputes a bill be required to pay the disputed amount into an interest bearing escrow account pending resolution of the dispute?*
>
> *AT&T Illinois Description of Issue 53(b): Should a Party that disputes a bill be required to use the preferred form or method of the Billing Party to communicate the dispute to the Billing Party?*
>
> *AT&T Illinois Description of Issue 53(c): Should the ICA refer to the Party that disputes and does not pay a bill as the "Disputing Party" or the "Non-Paying Party?"*
>
> *Sprint Description of Issue 53: Should the Billed Party be required to pre-pay good faith disputed amounts into an escrow account pending resolution of the good faith dispute?*

Response to AT&T:

Staff took no exception to the PAD on Issue 53, which required the Billed Party to use the Billing Party's billing dispute form, designated parties disputing bills as the "disputing party," and ordered that disputing parties did not have to pre-pay disputed amounts into escrow. PAD at 76. Although the PAD did not conform entirely to Staff's proposal on this issue, Staff continues to refrain from excepting to the ALJs' decision here. Staff IB at 70-73; Staff RB at 55-57.

ISSUE 57

Joint Description: Under what circumstances may a Party disconnect the other Party for nonpayment, and what terms should govern such disconnection?

No party took exception to the PAD's conclusion on Issue 57, so there is nothing to which Staff can respond.

ISSUE 58

Joint Description: Should the period of time in which the Billed Party must remit payment in response to a Discontinuance Notice be forty-five (45) or fifteen (15) days?

No party took exception to the PAD's conclusion on Issue 58, so there is nothing to which Staff can respond.

ISSUE 60

AT&T Description: Should the ICA require the Disputing Party to use the Billing Party's preferred form in order to dispute a bill?

Sprint Description: Can a Party require that its form be used for a billing dispute to be valid?

Response to Sprint:

Staff took no exception to the PAD on Issue 60, which required the Billed Party to use the Billing Party's billing dispute form although it did not conform to Staff's proposal on this issue. Staff BOE; *see* PAD at 82-83; Staff IB at 75; Staff RB at 59-60. Staff continues to refrain from excepting to the ALJs' decision here.

XI. Conclusion

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

_____

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May 13, 2013

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